Clements Wire & Manufacturing Company, Inc. *and* **International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 779.** Cases 15-CA-6602-2, 15-CA-6725, and 15-CA-6793

July 24, 1981

DECISION AND ORDER

On June 23, 1980, Administrative Law Judge James T. Youngblood issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed briefs supporting the Decision.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.

ORDER

Pusuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Clements Wire & Manufacturing Company, Inc., Biloxi, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Insert the following for paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order."

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge: The consolidated complaint which issued on June 23, 1978, as amended at the hearing, alleges that Clements Wire & Manufacturing Company, Inc. (herein called Clements or Respondent), engaged in various acts and conduct in violation of Section 8(a)(1) of the National Labor Relations Act, as amended (herein called the Act), and discharged employee Selmia Tootle because of her membership in, and activities on behalf of, the Union to discourage union membership, and failed and refused and continues to fail and refuse to reinstate Selmia Tootle for this reason and because the National Labor Relations Board's processes had been invoked on behalf of Tootle and because Tootle gave or provided testimony under the Act in violation of Section 8(a)(3) and (4) of the Act. A hearing in this matter was held in Biloxi, Mississippi, on November 1 and 2, 1978, and January 9, 10, and 11, 1979, and in Gulfport, Mississippi, on March 6 and 7, 1979. Following the hearing briefs were filed by the General Counsel, the Charging Party, and Respondent which have been duly considered.

Upon the entire record in this case, and from my observation of the witnesses and their demeanor, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is a Mississippi corporation with offices and a facility located in Biloxi, Mississippi, where it is engaged in the assembly and sale of electrical wiring harnesses. During the 12 months immediately preceding the issuance of the complaint, Respondent in the course and conduct of its business purchased and received goods and materials valued in excess of $50,000, which were shipped to it from points located outside of the State of Mississippi. During the same period Respondent sold and shipped goods and materials valued in excess of $50,000 directly to customers located outside the State of Mississippi. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 779 (herein the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Independent 8(a)(1) Allegations*[1]

1. The allegations that pertain to Gary Carmichael

In the summer of 1977,[2] the Union initiated an organizational campaign at Respondent's facility in Biloxi, Mis-

[1] The findings of fact herein are based on record evidence and testimony, sometimes disputed. Though the findings may not contain or refer to all the evidence, all has been considered. Any testimony contrary to the findings has not been credited. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony, and the demeanor of the witnesses.

[2] Unless specified all dates refer to 1977.

sissippi.[3] On August 11, Respondent's plant manager, Gary Carmichael, called a meeting of all day-shift employees at Respondent's Biloxi facility, shortly before the end of the shift, around 3:30 p.m. According to the employees who testified concerning this meeting, Carmichael informed the employees that he knew there was a lot of discontent among the workers in the plant and that he wanted to form a committee to meet with him to try to work these problems out and informed the employees that each department would be allowed to select a representative who would present individual grievances to him for resolution.[4] Carmichael informed the employees that they could then work out their problems, and if they did not outsiders would come in and then the plant would close down. Also during this meeting Carmichael attributed closing of a Michigan plant to an attempt by "outsiders to come in and take over."

Later that afternoon as the day-shift employees left work they were given slips of paper by Superintendent Dave Ross who requested the employees to mark the ballots and return them the next day. The following day after the ballots were returned a list of the names of the representatives who were elected were posted above the timeclock.

On August 12, when the second-shift employees noticed that the day shift had selected departmental representatives, they asked Carmichael why the night shift did not have a chance to vote for representatives. Carmichael responded that he had forgotten about the night shift and told them to get together and select one girl to sit on the committee. Virginia Gibbs credibly testified that Carmichael informed the employees that the Company would rather do it this way than have trouble with the Union. He told the employees that he had heard that there were union representatives around and he would rather take care of the grievances between themselves; that the Company was not a large Company and could not afford to pay a union, or if Respondent had to fight the Union, Respondent would just close the plant down. Gibbs and other employees who testified concerning this discussion said that in addition to Carmichael's threat to close the plant he expressly solicited grievances from the group and promised to resolve them. Additionally, Carmichael questioned employee Dorothy Seay about her involvement with unions prior to working for Respondent. Specifically Carmichael asked Seay, "Have you ever worked Union," and she responded that she had all her life. Carmichael informed the employees to bring their problems to him and guaranteed that their difficulties would be resolved. He again indicated that they did not need a third party to resolve their problems.

Patricia Langalias testified that, on August 15, she was elected night-shift representative for grievances. Subsequently Carmichael had several meetings with the grievance committee in the latter part of August and early September prior to his receipt of the Union's request for recognition and the filing of the representation petition. Carmichael admitted authorizing the election of departmental representatives and conferring with their chosen delegates.

Paragraphs 7a through d of the complaint allege that, on or about August 11 or 12, Respondent, through its Agent Gary Carmichael, orally solicited employee grievances and promised to resolve the grievances to prevent unionization; threatened employees that Respondent would close the facility in the event of unionization; orally interrogated employees about their sentiments, desires, and activities concerning the Union, and offered to grant employees their choice of departmental representative and conducted a vote among the employees for such purpose in an effort to resolve employee complaints to persuade the employees to abandon their desires for union representation. The facts as set forth above form the basis for these allegations of the complaint.

It is clear from the above-credited testimony of the employees that Carmichael did in fact orally solicit employee grievances and promised to resolve such grievances to prevent unionization. His reference to outsiders and third party during his August 11 or 12 speech is a clear reference to the Union. Although Carmichael denied that he had knowledge of any union activity prior to the receipt of the representation petition, which was filed on September 2, I do not credit his testimony. In fact Carmichael himself testified that he had heard rumors about the Union prior to the receipt of the representation petition on September 2. Additionally Superintendent David Ross testified that he was listening when Gary Carmichael delivered his speech about department representatives. He stated that Carmichael was talking about having a desire to resolve employee problems and he said that he preferred to resolve them between himself and the employees without a third party or outsider. Ross also stated that when Carmichael was referring to a third party or outsider he was referring to the Union. He also testified that Carmichael referred to another Clements Wire plant in Minden City, Michigan, and about the fact that it had to close. Ross also testified that he learned of the Union in mid-July and immediately informed Carmichael.

It is clear to me that Respondent through its supervisor, Gary Carmichael, engaged in the conduct as alleged in paragraphs 7a through d of the complaint in an effort to resolve employees' complaints and persuade employees to abandon their desires for the Union.

It is clear that Gary Carmichael's solicitation of grievances and his promises to resolve them was an attempt to persuade employees to abandon their union activities, and such conduct is clearly violative of Section 8(a)(1) of the Act, and I so find. It is also unlawful for an employer with knowledge of employee union activities to urge

[3] Some testimony indicates that the organizational campaign began as early as the first week in June. However, Selmia A. Tootle, an alleged discriminatee, one of the leading union adherents, and one of the employees instrumental in getting the union organizational campaign rolling, testified that she attended a union meeting on July 12, at which time she signed a union authorization card.

[4] On June 24, the night-shift employees at the Biloxi facility forwarded a letter to the management of Clements calling its attention to thefts and vandalism and the potential dangerous personal safety situations that existed around the plant, such as improper lighting and lack of proper security measures. The employees requested that proper security measures be taken to reduce or prevent further acts of theft and vandalism and provide employees with personal safety. Additionally, they requested that there be more patrols by the Biloxi police department.

or suggest the formation of a grievance committee. Additionally Carmichael's threats to close the plant are also violative of Section 8(a)(1) of the Act, as they do in fact interfere with, restrain, and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act. Further Carmichael's questioning of Dorothy Seay concerning her prior union involvement constitutes interrogation within the meaning of Section 8(a)(1) of the Act, and I so find.

Therefore it is my conclusion that Respondent has engaged in conduct violative of Section 8(a)(1) of the Act as alleged in paragraphs 7a through d of the complaint.

On October 7, Carmichael assembled the plant employees in the warehouse where he held a plant meeting and gave a speech to the assembled employees.[5]

Paragraph 7e of the complaint alleges that, on or about October 7, Carmichael threatened employees with loss of existing benefits if they supported the Union or if the Union were successful in the upcoming election. In support of this allegation several witnesses testified that during the October 7 speech Carmichael notified the employees that he was opposed to the Union, that he would fight to keep it out. He explained that he had to fulfill his promises because the employees could always sue to enforce his promises, and warned the employees that it was impossible to enforce union promises. It is also clear from the testimony of several witnesses that Carmichael notified the employees that, if bargaining between Respondent and the Union occurred, negotiations would commence at $2.30 an hour, the minimum wage. It is clear from the testimony of the General Counsel's witnesses and from the tape (Resp. Exh. 2) that Carmichael threatened to reduce existing wages and benefits if the employees voted for the Union. Thus, Carmichael informed the employees that, if they started with the Union in there, they would start with a blank piece of paper and "the law says you will get $2.30 an hour." He informed the employees that when negotiations began they would start with a clean sheet of paper and that the employees could no longer be guaranteed what they were now getting and that the Company did not have to sign anything that was going to jeopardize the survival of the Company. It is also clear that the employees at Clements were making more than the minimum wage at the time Carmichael delivered the speech. These remarks could only be made as a threat to reduce all wages to the minimum wage if the Union won the election.

It is my conclusion that Carmichael's remarks were meant to, and did in fact, threaten employees with loss of existing benefits if they supported the Union or if the Union were successful in the upcoming election as alleged in paragraph 7e of the complaint, and I so find.

Paragraph 7f of the complaint alleges that on or about October 7 Carmichael promised employees and thereafter effected increased life insurance coverage in an effort to dissuade employees' interest in and support for the Union. During the October 7 speech Carmichael reminded the employees that their annual wage increase had been effective on the preceding Friday.[6] Additionally Carmichael announced that the employees would receive a $20,000 life insurance policy. He explained that this decision was made prior to the commencement of the union activities and stated that this life insurance policy was given during the month of October when new benefits are systematically announced. Thus, Respondent contends that the granting of the $20,000 life insurance policy was a yearly benefit and had nothing to do with union activity at the plant. In support of his position Carmichael testified that in October 1966 the employees were given a wage increase and air-conditioning. The testimony of Carmichael and Supervisor Dave Ross clearly indicates that there was no additional benefits given in 1974, 1975, or 1978. Additionally it appears from the testimony of Carmichael and Ross that the air-conditioning benefit of 1976 was installed and operational before October 1976 and was functional in the summer of 1976 and was not announced as a benefit with the October 1976 pay increase. It is clear from the testimony of the General Counsel's witnesses and by the admissions of Carmichael that the employees had not been informed of any life insurance policy prior to the October 7 meeting, just 2 weeks before the union election which was scheduled for October 21. It is also clear that the initial payment to Guardian Life Insurance Company, the insurer, was dated 7 days before the representation election of October 21. Other than the testimony of Carmichael, which I do not credit, Respondent offered no documentary evidence in support of its contention that the life insurance plan had been under consideration for several months prior to October.

Under these circumstances, and as I do not believe that Respondent had any yearly benefit policy, it is my conclusion that the granting of the $20,000 life insurance policy to the employees on October 7, and effectuated on October 14, was done in an effort to persuade the employees not to support the Union, in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 7g of the complaint alleges that, on October 7, Carmichael promised employees that Respondent would construct a lunchroom and improve food services and conditions in an effort to persuade employees' interest in and support for the Union. During the October 7 meeting Carmichael had a question-and-answer period. During this period one employee asked Carmichael why they did not have a lunchroom or a place to eat their lunch. Carmichael responded that Clements' wife had been talking about that for some time and he hoped that within the next year when Respondent had space, by May or June 1978, Respondent did intend to have sufficient room for a lunchroom. Another employee asked why they did not have coffee machines and candy machines. Carmichael responded that he did not know that they had wanted such machines. Carmichael said he

[5] A cassette tape was introduced into evidence by Respondent as Resp. Exh. 2 which purports to be a tape recording of the exact speech delivered by Carmichael on October 7. The tape was transcribed and a copy is in this record. As can be seen from the transcript there were many distortions, incomplete sentences, and gaps in the tape recording. To the extent that the tape was audible and could be understood accurately it has been considered in this Decision.

[6] As it appears that Respondent normally gave its annual increase in October of each year it is not charged that the October 7 wage increase was unlawful.

would check into it and see about getting some better food service. Respondent contends that its plans to construct a lunchroom and obtain food vending machines were all part and parcel of a preexisting expansion plan for the Biloxi plant.

There is no question that Respondent was making efforts to obtain additional property for plant expansion before the union organizing campaign. But there is nothing in this record other than the testimony of Carmichael to indicate that Respondent had any plans for a lunchroom or better food services prior to the advent of the Union. The evidence introduced by Respondent would indicate that the only expansion plan Respondent was considering was for the purpose of increasing storage and warehousing and totally devoid of any reference to Respondent's plans to construct a lunchroom. The record indicates that by March or April the Company had obtained additional space, which allegedly made the area on the second floor of the plant available for construction of a lunchroom. However the employees were not informed of these plans until the October 7 meeting. Although the employees were told at the October 7 meeting that there would be a lunchroom in the future and improved food services, construction on the lunchroom did not in fact commence until October 1978. Under these circumstances it is clear that Respondent's well-timed announcement of the lunchroom and plans for improved food service were calculated to dissuade employees from voting for the Union, in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 7h of the complaint alleges that, on or about October 7, Carmichael promised employees that Respondent's plant rules and regulations would be revised in response to employee complaints in an effort to dissuade employee interest and support for the Union. During the October 7 speech Carmichael promised the employees that there would be a new set of rules and regulations. Carmichael informed the assembled employees that there would be a new set of rules and regulations with or without a union. He stated that without a union it would be between the employees and him and with a union it would be between him and the Union. Carmichael defends this promise to revise the rules and regulations as simply a reiteration of normal policy and that work on the revision of the rules had been going on for quite some time. Although he could not recall the date prior to October 7 when the employees had been notified of the plan to change the rules and regulations, he did indicate that in mid- or early July, when they got the departmental representative, everybody would have known something was going to be done. It is clear from the record that the departmental representatives were first discussed by Carmichael and the employees on August 11, and as I indicated earlier the departmental representative system was set up after Carmichael gained knowledge that union activity had begun. At the time of the hearing in this matter, the rules and regulations had not been revised. It is my conclusion that the announcement of the Company's plans to revise the rules and regulations during the peak of the union organizational campaign was done solely for the purpose to dissuade employees from supporting the Union, in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 7i of the complaint alleges that, on or about October 7, Carmichael solicited employee complaints and grievances concerning the existing work production rates and promised to reevaluate the rates and provide employees with information concerning rates in an effort to cause employees to abandon the Union.

During the October 7 speech by Carmichael, he solicited grievances concerning production rates from employees and promised to reevaluate the rates prior to issuing any warning slips. Additionally he promised to make information about the rates more readily available to the employees. From the testimony of several of the employees at the hearing and from the text of the tape (Resp. Exh. 2) it appears that the rate system was a cause of considerable concern and grief to Respondent's production workers. Carmichael denied that he solicited grievances concerning the rates and promised to reevaluate the rate system prior to his knowledge that his speech had been recorded. He admitted that he had never before solicited or promised to try to resolve employee rate problems. As there was no established policy of holding meetings to air grievances, I can only conclude that Respondent in soliciting employee grievances concerning the rate reevaluation and other problems, and promising to reevaluate the production rates, was attempting to cause the production workers to abandon the Union. In my view such conduct is clearly coercive and violative of Section 8(a)(1) of the Act, and I so find.

Paragraph 7j of the complaint alleges that, on or about October 7, Carmichael promised employees additional and improved parking facilities in an effort to persuade employees to abandon the Union. During the October 7 speech Carmichael informed the assembled employees that the Company had learned that afternoon that they could lease additional space to improve the employee's working facility. Like the lunchroom and food service promises, the Employer also contends that the plan to improve employee parking facilities were also a part of the preexisting expansion plans for the Biloxi plant. As indicated earlier the documents introduced into evidence by Respondent indicate only that Respondent's expansion was for the purpose of increasing storage and warehouse space at the plant. There is nothing in the documents concerning an expansion of the parking facilities. While Respondent was making efforts to obtain additional property for plant expansion prior to the advent of the Union, it is clear from Carmichael's letter of April 17 (Resp. Exh. 8) to the Biloxi planning commission that Respondent was not considering an expansion of parking area. In that letter Carmichael expressly stated that the Company's projected increase in the number of employees from 175 to 198 should pose no additional traffic or parking problems. Like the many other promises made during the October 7 speech, it is my conclusion that the promise of additional and improved parking facilities was done solely to persuade the employees to abandon the Union and to vote against the Union in the upcoming election. It is my conclusion that such promises are

clearly violative of Section 8(a)(1) of the Act, and I so find.

Paragraph 7k of the complaint alleges that, on or about October 7, Carmichael promised employees increased building security and guard services and thereafter, on or about October 13, implemented such improvements to dissuade employees' interest and support for the Union. As indicated earlier on or about June 24, the night-shift employees presented a letter to Respondent requesting that proper security measures be taken to reduce the acts of theft and vandalism which had been occurring at the plant. On or about July 1, the Company installed one floodlight in the rear parking area and, on or about October 13, hired a security guard and installed an additional floodlight.

I find nothing in the record to indicate that any promise was made to the employees on October 7 by Carmichael that increased building security and guard services would be made. There was some discussion of a security guard communicated to the employees at the October 19 speech, but this was 6 days after the guard first appeared at the plant. While Respondent's motive in this regard is suspect, in view of its other promises of benefits made to the employees during the October 7 speech, I cannot assume that Respondent's actions in this regard were done for the same reasons. Thus, I cannot conclude that Respondent's actions were done for any other reason than complying with the employees' request as set forth in their June 24 letter. Therefore, I shall recommend dismissal of paragraph 7k of the complaint.

Paragraph 7l of the complaint alleges that, during the week of October 10, Respondent provided employees with improved restroom facilities and accessories in an effort to cause employees to abandon the Union. Several of the witnesses who testified on behalf of the General Counsel testified that, approximately 10 days prior to the union election on October 21, Respondent cleaned up the restrooms and kept them well supplied with necessary materials, including free sanitary napkins, replaced a broken sanitary napkin machine, painted one of the restrooms, and undertook other repair and remodeling work in the restrooms. The testimony reflects that, a few days after the Union won the election, the sanitary napkin machine was promptly removed and the restrooms deteriorated to their former condition, lacking in basic essentials such as toilet paper, hand soap, and female sanitary napkins. Respondent contends that it always maintained sanitary napkins in well-supplied restrooms and the repairs and improvements in facilities made just prior to the election were a matter of routine maintenance in repair work which had nothing to do with the Union. Respondent also contends that the sanitary napkin machine was removed after the election because it was the wrong machine. That it was a 15-cent rather than a 10-cent machine. Carmichael also admitted that these improvements constituted the first major overhaul of restroom facilities since the plant opened in the early 60's. I cannot accept Respondent's contentions that this was routine maintenance and had nothing to do with the Union. It is my conclusion that Respondent's defense is clearly rebutted by Carmichael's own remarks in a speech made on October 19, when he stated:

> So, what I am up here today for is to ask you to consider all of this, and ask you to be a little forgiving of some of our shortcomings. Give us a little bit of time to take care of your problems. In other words, a little bit of a second chance, maybe, and vote no, so that we, as a company can work with you as an employee, and solve your problems.
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> * * * * *
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> For example, your restroom haven't [sic] been getting as cleaned up as it should be. We have been having janitorial problems. I think we have that straighten out now. We hope to be able to keep you in clean restrooms, with sufficient material in here to handle your problems.

From these remarks it is clear to me that Respondent made these changes solely to persuade the employees to vote against the Union in the upcoming election. It is therefore my conclusion that Respondent has violated Section 8(a)(1) of the Act in this regard.[7]

Paragraph 7n[8] of the complaint alleges that, during the week of October 21, Respondent provided the employees with better working conditions by cleaning work areas and hallways in an effort to cause the employees to abandon the Union. The record in this matter clearly reflects that, during the week of October 21, the date on which the election was to be held, the work areas and aisles were cleaned by Respondent's employees. This fact is corroborated by employee testimony as well as the tape admitted into evidence as Respondent's Exhibit 1. Respondent contends that the cleaning and painting of the walls and work areas during the week of the election was done in anticipation of an impending, but unexpectedly announced, visit by the Ford Motor Company buyers, Respondent's chief customer.

In Carmichael's speech of October 7, he stated that the employees were tripping over materials in the aisles and that the aisles were not lined up properly so that they would know how to walk to get out of the plant if they had to. It is true in this speech he made no reference to the Ford inspection. At the preelection speech on October 19, he urged the employees to keep their own work stations clean. And during this speech, Carmichael informed the employees that he would be tied up for the afternoon because he had a buyer from Ford Motor Company coming down to look the place over, to observe the people, and to observe Respondent's methods and layout of the plant. He informed the employees that this was very important business and he would like for each and every one of them, for the rest of the day, to stay at their stations and keep working and to make sure

[7] Par. 7o of the complaint alleges that, on or about October 23, Carmichael withdrew and removed the improvements to and/or accessories installed in the restroom facilities in reprisal for employees' support of the Union. It is my conclusion that Respondent removed the sanitary napkin machine after the election in retaliation for the employees selecting the Union as their collective-bargaining representative. Therefore, it is my conclusion that Respondent has violated Sec. 8(a)(1) of the Act as alleged in par. 7o of the complaint.

[8] Par. 7m of the complaint was amended out of the complaint.

that their station was clean and organized for the rest of the day.

He informed the employees that the gentlemen from Ford were not coming back the next day and it was pretty important for future business that the Company impress Ford as being organized and neat in business and work habits. He asked the employees to bear with him this afternoon and try to keep their area as clean as possible. He said, "[Y]ou might also like it enough to want to do it everyday."

I do not regard the request that the employees clean and keep their work stations clean as a promise of benefit. On the contrary, it appears that the employees were requested to do a job that they had not done in the past. Although Carmichael later apologized for the general housekeeping problem in the plant and promised that the situation would be improved in the future, I cannot conclude that this was done in an effort to cause employees to abandon the Union. Therefore, I will recommend that paragraph 7n of the complaint be dismissed.

At the hearing the General Counsel amended the complaint to add three new subparagraphs to paragraph 7. In substance these read: (1) Subparagraph p stated that on or about October 19 Respondent orally promised employees that Respondent would improve the janitorial services in the restrooms in an effort to undermine the Union, (2) subparagraph q stated that on or about October 19 Respondent orally promised employees that it would construct a lunchroom in an effort to undermine the Union, and (3) Subparagraph r stated that on or about October 19 Respondent orally promised employees additional parking facilities in an effort to undermine the Union or to dissuade the employees from supporting the Union.

On October 19, Plant Manager Gary Carmichael gave a second speech to the assembled employees. The substance of this speech was taped by Selmia Tootle and that cassette tape was offered into evidence by Respondent. A verbatim transcript of that tape is in the record and marked Respondent's Exhibit 1. From a reading of the transcript of the cassette tape (Resp. Exh. 1) and from the portions of that speech already set forth in this Decision, it is clear that Respondent promised the employees that it would construct a lunchroom and that it would provide improved janitorial services and also promised the employees additional improved parking facilities all in an effort to dissuade them from supporting the Union and to influence their vote in the upcoming election. Accordingly, I find that Respondent has engaged in violation of Section 8(a)(1) as set forth in subparagraphs p, q, and r of paragraph 7 of the complaint.

2. The 8(a)(1) allegations of the complaint as they pertain to supervisor and Agent Les Hudgeons[9]

The complaint in paragraph 8, subparagraphs b, c, g, and i, alleges that on August 17 Hudgeons interrogated employees about whether they had been contacted by the Union; on September 6, orally interrogated employees about their sentiments and desires concerning the Union; on or about September 15, orally interrogated employees about how they intended to vote in the upcoming election and their activities on behalf of the Union; and, on September 19, orally interrogated employees about their union activities and the union activities of other employees.

Employee Pat Langalais testified that on August 17, while she was at her machine, she and employee Audrey Powell were approached by Supervisor Les Hudgeons. He immediately asked if anyone had discussed the Union with them. When neither employee responded Hudgeons warned them that unions were causing northern plants to close and move south often under different names. Powell also testified to this conversation. Employee Sue Rubinsak credibly testified that, on September 6, she and two other female employees were approached by Hudgeons while they were in the spot taping department. Hudgeons was asked about a raise and he stated he did not know what to tell them. He then questioned them regarding the Union. When Rubinsak asked, "What Union?" Hudgeons informed her that although he might be dumb he was not stupid.

Ruzzie Harris credibly testified that she was approached by Hudgeons on September 15. Hudgeons came to her work station and said that he wanted to question her. When she asked about what, Hudgeons said that he wanted to discuss the Union and informed her that Carmichael had told him that the union election was scheduled for October 21. Hudgeons repeated that he wanted to know if Harris knew about the Union and wanted to know how she was going to vote. Later on in the conversation Hudgeons asked Harris if she had ever previously been a union member and when she told him yes he asked her were she had worked.

Harris stated that Hudgeons approached her again on September 16 and told her that she was going to tell him about the Union and stated that he knew that she knew about it. At this point Hudgeons turned to another employee, Dorothy Seay who was about 8 or 9 feet away, and asked her if she knew anything about the Union. She said no and walked away. A few minutes later Hudgeons returned to Harris' work area and warned her that she was going to tell him about the Union and that he knew about her union activity. Harris refused to say anything and denied having any knowledge about the Union. She asked Hudgeons why he was continuing to harrass her and he left.

Employee Dorothy Seay credibly testified that she had a conversation with Hudgeons in the terminating department on or about September 19. According to Seay, Hudgeons approached her and inquired about her work progress and asked her if Pat Langalais had given union cards to the new employee. Seay told him that he would have to discuss that matter with Langalais, whereupon he walked away.

Respondent did not call Les Hudgeons to the stand to deny any of the testimony of the employees. Therefore this credited testimony stands on the record uncontra-

[9] The allegations as they pertain to Hudgeons are contained in par. 8, subpars. a through j of the complaint. At the hearing the General Counsel amended out subpars. a, e, and f from par. 8 of the complaint, and in lieu thereof substituted the following: "On or about October 3, 1977, Supervisor Les Hudgeons orally threatened an employee with unspecified reprisals if the Union was successful in organizing at the plant."

dicted. It is clear that Hudgeons engaged in interrogation of employees as set forth in the complaint, and I so find. It is also clear that this type of interrogation is totally proscribed by Section 8(a)(1) of the Act.

Paragraph 8d of the complaint alleges that on or about September 6, Hudgeons threatened employees with loss of scheduled wage increases because of, and in the event of their continued support of, the Union. In support of this allegation former employee Virginia Gibbs credibly testified that, on September 6, she and three other female employees were working in the spot taping and insulation room. Gibbs had never worked in this area before and her fellow employees informed her that the production rate had recently been raised to 90 percent. The women then decided to question Hudgeons regarding the rate increase and called him to their area. He informed them that it was necessitated by Respondent's failure to make a profit. He informed them that, if the employees failed to achieve the new quota, Respondent would be unable to purchase electricity for the facility. He also warned them that if Respondent encountered too much difficulty with the Union the regularly scheduled October raise would be canceled. Gibbs credibly testified that she could not recall any rate changes prior to the advent of union activity.

As I indicated earlier Les Hudgeons was not called to testify. Therefore the testimony of Virginia Gibbs stands uncontradicted on the record. Gibbs was a former employee of Clements and no longer works there. Thus it appears that she had no interest in the outcome of this proceeding. In any event I have credited her testimony. Accordingly, it is clear that Hudgeons threatened these employees with loss of a scheduled wage increase because of the Union in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 8h of the complaint alleges that, on or about September 16, Hudgeons created the impression of surveillance of union activities by informing employees that he knew they had information about the Union. In support of this allegation of the complaint, Ruzzie Harris credibly testified about the several instances of interrogation by Hudgeons and his constant harassment relating to her knowledge of the Union. She also testified, as indicated above, that on September 16 Hudgeons warned her that she was going to tell him about the Union and that he knew about her activity. Informing an employee that you have factual knowledge of her union activities clearly creates the impression of surveillance and gives the employee the impression that she is under surveillance. Such conduct is clearly violative of Section 8(a)(1) of the Act, and I so find.

Paragraph 8j of the complaint alleges that, on or about September 24, Respondent through Hudgeons assigned an employee to more onerous work under circumstances which were physically difficult and demanding in reprisal or retaliation because said employee would not submit to Hudgeons' interrogation concerning the Union or because of, said employees participation in the Union. Harris credibly testified that, on September 24, Hudgeons again approached her at her work station. She stated that he walked up to her, complimented her on her work, and notified her that she had to work on the opposite side of the plant for the remainder of the day. When she asked why, and reminded Hudgeons that it was painful for her to stand on her right leg, he replied that she would recover. Harris was then moved to her new area. After Harris was in this new area for about 20 or 30 minutes Hudgeons and Supervisor Bud Galloway appeared at her work station, Hudgeons looked at her work and commented that she was performing well and stated, "I am going to get this out of you if it is the last thing I ever do."

Harris testified that later on in the day Hudgeons returned and stated, "I am going to get this thing out of you if it is the last thing I ever do." When she disclaimed any knowledge of union activity Hudgeons ignored her comment and warned her that on the following Monday she would be assigned to the terminating department. Harris asked Hudgeons to explain why he was treating her in this manner and reminded him that she had not requested a transfer. When she suggested that Hudgeons might soon terminate her, he denied that and indicated that they could not afford to lose her because she was a good worker. From this testimony I can only conclude that Hudgeons transferred her to a more physically demanding job and one which was painful for her, because Harris would not submit to Hudgeons' interrogation concerning the Union or about her own participation in the Union. This type of conduct is clearly violative of Section 8(a)(1) of the Act, and I so find.

As indicated earlier a new subparagraph was added to paragraph 8 which reads as follows: On or about October 3, Supervisor Les Hudgeons orally threatened an employee with unspecified reprisals if the Union were successful in organizing at the plant. In support of this allegation employee Robin Blue credibly testified that on October 3 she, Brenda Fox, and Shirley Comb were working in the testing area. She stated they were eating and had been discussing whether they were going to a union meeting the next day. She stated that Les Hudgeons said to them that if the Union came in a lot would be taken away from them. She said she immediately changed the subject and asked Les a question about production and raises and Hudgeons said that if the Union were brought in a lot would have to be put down on paper and it would be bad on both us and the Company. In my view this statement by Hudgeons is clearly a threat to the employees that there would be reprisals if the Union were successful in organizing at the plant, and I so find.

Paragraph 9, subparagraphs a and b, alleges that, on or about September 14, Respondent by its supervisor and agent, Elijah Cooley, orally interrogated employees about whether they had signed union authorization cards and threatened employees with loss of pay and/or wages if the Union were successful in organizing Respondent's employees.

In support of this allegation employee Bernice Woods credibly testified that on September 14 she had a conversation with Supervisor Elijah Cooley about the Union. She testified that this conversation took place in the spot taping department. She testified that she and employee Kim Barnes were asked by Cooley if he could ask a per-

sonal question. When Woods responded in the affirmative Cooley asked them if they signed a union card, and Woods asked Cooley why he wanted to know. When he responded that he just wanted to know Woods told him that she had signed a card. Cooley then told her that if she had signed a card it would not do her any good, because if the Union came in it would be harder on her and the other employees and she and the other employees would be making less money, not more. He further informed the employees that if the Union came in they would have to pay union dues. Woods then told him that the union dues will be around $7 a month. Cooley replied if they did not get it one way they will get it another. And when she asked him what he meant, he said he would tell her in about 2 weeks and walked away. Cooley was not called to testify. As I have accepted the testimony of Woods in this regard it is clear that Cooley engaged in interrogation without giving the employees assurance against reprisals as set forth in *Struksnes Construction Co., Inc.*, 165 NLRB 1062 (1967), in violation of Section 8(a)(1) of the Act. Additionally Cooley's threat to reduce employee's wages is clearly unlawful and in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 10 of the complaint, as amended at that hearing, alleges that on or about August 25 Respondent by its supervisor and agent, Terry Cooper, increased employee production rates in reprisal of, or retaliation for, their support and activity on behalf of the Union, and during the month of November orally interrogated an employee concerning said employee's union activity. In support of the allegation involving increased employee production rates former employee Lynette Thompson credibly testified that on August 25, while working the 483AA job, Supervisor Terry Cooper called her to his office. Cooper showed Thompson her production sheet which reflected a rate of 90 percent. He complimented her on attaining this rate and informed her that she would now be required a quota of 100 percent. Thompson said she would try. Cooper informed her that two girls were doing good, two girls were doing bad, and two girls were slowing the other girls down. After this conversation Thompson returned to work. She further testified that three other girls were called in about production. Former employee Virginia Gibbs also testified that, around September 6, she recalled being informed of an increase from 80 to 90 percent by Supervisor Cooper and Hudgeons.

With regard to the allegation concerning interrogation by Terry Cooper, employee Claudia Jones credibly testified that in November Terry Cooper approached her and whispered, "I heard that you have been chosen on the negotiating committee." She informed Cooper that that was correct and asked him how he knew and he replied that he had ways of knowing. Cooper did not testify; therefore, the testimony of Claudia Jones, Virginia Gibbs, and Lynette Thompson stands uncontradicted on the record. Therefore it is my conclusion that Respondent by its supervisor and agent, Terry Cooper, increased employee production rates in reprisal and retaliation for their support and activities on behalf of the Union. It is also my conclusion that Supervisor Terry Cooper interrogated employee Claudia Jones, as set forth in the complaint as amended.

Paragraph 11 of the complaint alleges that, on or about September 27, Respondent by its supervisor and agent, Harold Haase, at its facility, threatened employees with loss of employment if the Union successfully organized said employees. In support of this allegation Virginia Shartle credibly testified that on September 27 she was approached by Harold Haase at her molding machine, and asked why she and Sylvia Davis had asked him the day before how much of a raise he had gotten when he made supervisor. She informed him there was no special reason, just nose problems. Haase stated that a lot of people were trying to find out a lot of things and informed them that he had belonged to unions before. She stated that she had not belonged to a union before, but she thought that the employees deserved more than $2.70 an hour. Haase stated that the employees were making more than his wife was at Ingalls, and said that if they came in one day and did not have work that they would be sent home for a few days without pay. Respondent did not call Haase to testify. It is my conclusion that this statement by Haase to the employees is a clear threat that, if they supported the Union, there might not be any work and the employees would be laid off without pay. As such this statement is clearly violative of Section 8(a)(1) of the Act, and I so find.

Paragraph 12 of the complaint alleges that, on or about October 20, Respondent by its supervisor and agent, Don Schneider, orally interrogated employees about how they intended to vote in the upcoming election and their sentiments, desires, and activities on behalf of the Union. In support of this allegation Wilma Irwin testified that she is currently employed by Clements in Biloxi, Mississippi, and that she is a spot taper on the morning shift. She testified that on August 16 she signed a union card. She further credibly testified that on October 20 she had a conversation with Supervisor Don Schneider around 8:30 in the morning, where she was working at her table with several other employees, Claudia Jones and Bernice Woods. Schneider approached the table and stated, "Good morning girls, I guess you know tomorrow is election day, and how are you going to vote?" Irwin stated that she would vote yes. Schneider said to her, "Why do you want to do a thing like that?" She stated because she was for the Union. Schneider stated that at one time he belonged to a union and through the union he lost his car, his house trailer, and he even got hit on the elbow with a lunch pail. He further asked her, "Do you want to have that happen to you?" At this point Irwin excused herself and went to the bathroom. At or about this point Schneider left but came back in the afternoon and had a further similar conversation and then walked away from the table. Respondent failed to produce Schneider to testify.

Questioning an employee regarding how he would vote in an upcoming representation election is clearly coercive and such blatant interrogation as engaged in by Schneider is clearly violative of Section 8(a)(1) of the Act, and I so find.

B. *The Alleged Discriminatory Discharge of Selmia Tootle and the Discriminatory Refusal To Rehire Selmia Tootle*

The complaint alleges that on or about January 16, 1978, Respondent discharged employee Selmia Agnes Tootle and thereafter failed and refused and continues to fail and refuse to reinstate her because of her membership in and activities on behalf of the Union to discourage union support and other protected concerted activities of its employees. The complaint further alleges that on or about January 30, 1978, Respondent failed and refused to reinstate employee Selmia Agnes Tootle because the Board processes had been invoked on behalf of Tootle and because Tootle gave or provided testimony under the Act in violation of Section 8(a)(4), (3), and (1) of the Act.

Selmia Tootle was originally employed by Respondent from August 1973 until sometime in February 1974 when she voluntarily resigned to care for her grandson. Around January 1976 she was rehired. At the time of her termination on January 16, 1978, she was employed in the hand assembly section under the direction of Supervisor Brian Buckoski. The record reveals that Tootle was one of the leading union adherents, spearheading the Union's campaign along with her sister-in-law and coworker, Beverly Hebert. In this connection her first involvement with the union movement at Respondent's facility was on July 12, when she signed a union card and attended her first union meeting. Tootle attended additional union meetings, actually held one meeting in her home, and solicited approximately six employees' signatures for union cards. She distributed union literature around the plant, wore a "Yes" button on October 21, the date of the representation election, and also served as the Union's observer. It cannot be disputed, and Respondent admits, that Selmia Tootle was one of the prime movers in the Union's organizational campaign in Clements Wire. And the Company was quite aware of her role as a leader among the workers. The record here reflects by almost uncontroverted evidence that Selmia Tootle was a reliable and competent employee who had a good and friendly relationship with the management of Clements Wire until after the advent of the Union. Tootle worked for Clements Wire for approximately 4 years. During these years neither her competence, attitude, nor her personal habits were the subject of discipline until it became known that she was involved in union activity.

Shortly after Respondent received the Union's petition on September 2, it began an antiunion campaign. In this connection around the first week of September Respondent began to hold campaign strategy meetings with its supervisors. These meetings continued on a weekly basis up until the election. Although Carmichael denied that supervisors were instructed to find out which employees were active for the Union, he did admit that on some occasion supervisors volunteered an opinion about specific employees at the meetings. Carmichael stated that he was sure that Selmia Tootle's name did not come up at any of the meetings. Production Supervisor David Ross testified that Carmichael had specifically asked him about his knowledge of particular peoples' sympathies and activities. Ross further testified that Tootle was identified in the supervisors' meetings as the one who started the whole union campaign. Although Ross testified that there were other names mentioned in the meetings he could not remember the names of any specific employee other than that of Selmia Tootle. Ross further admitted that he had specifically discussed Tootle's leadership role with Day-Shift Foreman Bud Galloway. Ross further testified in response to a question as to whether he had discussed assigning Tootle to jobs he knew would be difficult for her to perform, he answered, "I remember putting her on jobs that were rated." He specifically stated that he knew her capacity and her work abilities and what type of job she was good at and which one was difficult for her.

On September 23, in the heat of the Union's campaign, Tootle was summoned to Dave Ross' office by Bud Galloway. Ross reprimanded Tootle for failing to make production on a particular job called the #710CA wire. When Tootle pointed out to Ross that her production on that particular job was the same as it always had been, he quickly shifted his complaint to her performance on another job, a spot taping job. She then told Ross that she had not been informed of the production rate on the job in question and Ross told her it was her responsibility to find out. Tootle further testified that it was the first time in a few days that she had done a spot taping job and as far as she knew there was no rate on the particular job in question. She refused to sign the warning slip. When Ross was asked whether he and Galloway had set Tootle up for a warning notice on production he testified I do not remember.

A few weeks later at the October 7 meeting, as discussed earlier, Tootle asked Carmichael about people who had already received warning notices even though they were on new jobs or did not know the rates. Carmichael tried to ignore her, but when she kept pressing he finally stated, "Well maybe you are a special case." Tootle's testimony in this regard was corroborated by Virginia Shartle, who testified that she heard Carmichael say that Selmia's case was a special one. She also testified that she remembered distinctly Carmichael looking at Selmia and giving her a dirty look. Tootle credibly testified that in the months following the election she was constantly being moved around from one job to another. She said on some days she was moved to three or four jobs making it very difficult for her to make production. Although she stated that it was not unusual for employees to be switched around on a daily basis this had not been common in her own experience.

On January 16, 1978, Tootle reported to work around 7 a.m. Work was slow that morning and around 8:30 Tootle, Brenda Hawthorne, Renee Wren, and Kathy Bennett were assigned to perform a particular insulating job called the holly carburator job. At that time Supervisor Terry Cooper placed some wires at the end of Tootle's table. Supervisor Buckoski selected a couple of wire bundles, placed them in front of Tootle, and explained her assignment. He informed her at the time that production was over 600 per hour. This was the first time that Tootle had ever worked on that job which was a par-

ticularly difficult and onerous one. Tootle testified that the wire and terminals were sharp and that they cut into her fingers. The rubbing and cutting action also caused blisters on her fingers and hands. Before long, the four women on the job began complaining about how difficult it was, and Buckoski gave each of them a tool to use which made the job somewhat easier. Two additional employees who had been assigned to perform this task were not provided tools. Tootle testified that although she had been given the tool it had come too late, her fingers became cut and started to bleed, and although she was in pain she taped her fingers and continued to work. At approximately 2 o'clock that afternoon, Supervisor Terry Cooper returned to Tootle's area and said that he needed two employees to voluntarily relinquish their tools for another job. Tootle replied that she would give him her tool if she were assigned another job. Cooper replied that he could not do that. Two of the women performing this job, Brenda Hawthorne and Renee Wren, gave up their tools to Cooper and Kathy Bennett gave her tools to Renee Wren. Within approximately 5 minutes Brian Buckoski approached the table and took Hawthorne and Bennett off the holly carburator job and assigned them to a different job. Tootle continued to work.

At approximately 3 p.m., Buckoski approached Tootle and said that he wanted her tool. When she asked if he were going to give her another job he responded, "No, you have to work without it." Tootle told Buckoski that her hands were already cut up, bleeding, hurting, and all taped up, and that she could not perform the job without the tool. She further informed him that she would not do the job without the tool. She reiterated her request for another job, but Buckoski took the tool and left. Tootle ceased performing the task and Brian Buckoski approached her again and asked her if she were going to get to work. She said she would be glad to work if he gave her another job. Buckoski then walked over and talked to Supervisor Terry Cooper who turned around, looked at Tootle, looked back at Buckoski, and shook his head, indicating no. Buckoski approached Tootle and summoned her to the office. Tootle testified that a few minutes after Buckoski had taken the tool away from her she saw him give the tool to another employee by the name of Bobby Russell. Russell had supported Respondent in the representation election and gave testimony against Tootle in the investigation of objections to the election. Tootle's testimony in this regard was corroborated by several other witnesses.

Tootle followed Buckoski to the office where he immediately sat down and began to write a warning. He asked Tootle to sign it and return to work. Tootle informed him that if he would give her another tool or give her another job she would be glad to go back to work. At this point Supervisor Bud Galloway appeared and informed Tootle that a tool was not required to perform the job. He stated that she had to return to work or be terminated. She explained that she had been given a tool without requesting it and had been told that it would make the job easier. She also assured Galloway that she would return to work if given another job or another tool. Galloway again stated she would either return to work or be terminated as of 3:15 p.m. Tootle informed him that that was alright, she walked out, collected her personal belongings and her worksheet, and left. Respondent claims that Tootle was discharged for insubordination and it had nothing to do with her union activities.

On January 30, 1978, Tootle returned to the plant to ask Gary Carmichael if she could have her job back and Carmichael stated that he had talked to Supervisor Bernard Corpe, Brian Buckoski, and Bud Galloway and under the circumstances he had to go along with them. He further informed Tootle that she was told that her job was only temporary. She responded that she was not told that it was temporary, that she felt that she had always given them good work, and that she thought this counted for something. Carmichael stated, "Oh it does, you know we don't like the Union to come in and tell us what to do, we run this plant the way we want it run." He further told her that he had been in touch with his attorney, and the Labor Board had been here taking testimony, and that he would leave things as they were right now, but maybe in the future he could give her her job back. Tootle thanked him for his time and Carmichael told her he admired her for the way she was handling things. Respondent stipulated to the fact that a few days prior to Tootle's meeting with Carmichael on January 30, 1978, a Board agent from Region 15 had been to the plant to conduct an onsite investigation of certain 8(a)(3) charges filed in Case 15-CA-6756.

The difficulty of the holly carburator job was not exaggerated by Tootle. Another employee, Dorothy Creekmore, was also assigned to perform this job. Creekmore testified that the day following Tootle's discharge when she began to work her fingers were quickly punctured by the wires. When she reported to work on January 18, 1978, she was again assigned to the holly carburator job and she knew at that time she would be unable to continue. After approximately 2 hours she asked Cooper to place her on another job and informed him that if she were forced to continue she would have to quit. Cooper replied that since the supply wires were short he would move her. Creekmore, unlike Tootle, was not issued a warning for her insubordination.

Selmia Agnes Tootle appeared to me to be a straightforward and trustworthy witness and her testimony had a ring of truth. Carmichael's testimony was evasive, inconsistent, and particularly inconsistent after he was confronted with the tapes of his several speeches. Therefore, as I indicated earlier, Carmichael's testimony is discredited. Respondent's supervisor, Bernard Corpe, testified to this incident. To the extent that the testimony of Corpe is inconsistent with that of Tootle, it is discredited.

It is my conclusion that the evidence presented amply demonstrates that Respondent's discharge of Selmia Tootle was violative of Section 8(a)(3) of the Act, and I so find. In this regard it is clear that Selmia Tootle was a very valued employee who had worked for the Company for over 4 years without any problems, until the advent of the Union. The Company was aware of the fact that she was a leading union adherent and had spearheaded the Union's campaign. The Company was obviously aware that she was an observer for the Union at

the election on October 21. As testified to by David Ross, the Company was also aware that Selmia Tootle was the one who brought about the union campaign and he had discussed this matter with Gary Carmichael and Bud Galloway, who was instrumental in the discharge of Tootle. Moreover, the warning for her production on September 23 appears to me to be a complete subterfuge. Furthermore, the disparate treatment accorded Selmia Tootle on January 16, 1978, by Respondent in taking a tool from her, assigning two other employees to different job, and refusing to assign Tootle to a similar job, is completely inconsistent with any theory that Selmia Tootle was insubordinate. Such conduct clearly discourages union membership.

Under the circumstances, it is my conclusion that Respondent discharged Selmia Agnes Tootle because of her union membership and activities on behalf of the Union, and that they failed and refused to rehire her for the same reason. Moreover, it is also my conclusion that Respondent failed to reinstate Tootle because of her testimony on behalf of the Union and because her name appeared on charges which Respondent was aware of prior to January 30, 1978, the date on which she was refused reinstatement. Such conduct clearly violates Section 8(a)(3) and (4) of the Act, and I so find.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with the operations of Respondent, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent engaged in, and is engaging in, unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully and discriminatorily discharged Selmia Agnes Tootle, I shall recommend that Respondent reinstate her to her former position of employment or, if that job no longer exists, to a substantially equivalent position, with no loss of seniority or any rights and privileges previously enjoyed and make her whole for any loss of pay suffered as a result of the discrimination against her with interest. Any backpay found to be due shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[10]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By orally soliciting employee grievances and promising to resolve such grievances to prevent unionism; by threatening employees that Respondent would close its facility in the event of unionization; by interrogating employees as to their union activities and sympathies, and the sympathies and activities of their fellow employees; by interrogating employees about whether they had been contacted by the Union and how they intended to vote in the upcoming election; by offering to grant employees their choice of departmental representatives and conducting a vote among employees for such purpose in an effort to resolve employee complaints to persuade employees to abandon their desires for unionization; by threatening employees with loss of existing benefits if they supported the Union or if the Union were successful in the upcoming election; by promising employees increased benefits in an effort to persuade employees to abandon the Union; by soliciting employee complaints and grievances concerning the existing production rates and promising to reevaluate the rates and provide employees with information concerning rates in an effort to cause employees to abandon the Union; by providing employees with improved restroom facilities and accessories in an effort to cause employees to abandon the Union; by withdrawing and removing improvements to and/or accessories installed in the restroom facilities in reprisals for employees' support of the Union; by threatening employees with loss of scheduled wage increases because of their continued support of the Union; by creating the impression of surveillance of union activities by informing employees that Respondent knew they had information about the Union; by assigning employees to more onerous work under circumstances which were physically more difficult and demanding in reprisal or retaliation because employees would not submit to Respondent's interrogations concerning the Union or employees' participation in the Union; by threatening employees with loss of pay and wages if the Union were successful in organizing Respondent's employees; by increasing employee production rates in reprisal or retaliation for their support and activities on behalf of the Union; and by threatening employees with loss of employment if the Union successfully organized the employees, Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

4. By discharging Selmia Agnes Tootle on January 16, 1978, and thereafter failing and refusing and continuing to fail and refuse to reinstate her because of her membership in, and activities on behalf of, the Union, to discourage union support and other protected concerted activities of its employees, Respondent has violated Section 8(a)(1) and (3) of the Act.

5. By refusing on January 30, 1978, and failing and refusing to reinstate employee Selmia Tootle because Board processes had been invoked on behalf of Tootle and because Tootle gave or provided testimony under the Act, Respondent has engaged in conduct violative of Section 8(a)(1), (3), and (4) of the Act.

6. Respondent has not engaged in any unfair labor practices not specifically found herein.

[10] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

7. The unfair labor practices enumerated above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the entire record, the findings of fact, and the conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Clements Wire & Manufacturing Company, Inc., Biloxi, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Soliciting employee grievances and promising to resolve such grievances to prevent unionization.

(b) Threatening employees with plant closure in the event of unionization.

(c) Coercively interrogating employees concerning their union activities, sentiments, and the sentiments and union activities of their fellow employees.

(d) Coercively interrogating its employees concerning how they intend to vote in the upcoming election.

(e) Granting employees a choice of departmental representatives and conducting votes among employees for such purpose in an effort to resolve employee complaints to persuade employees to abandon their desires for union representation.

(f) Threatening employees with loss of their existing benefits if they support the Union or if the Union is successful in the upcoming election.

(g) Promising employees with increased benefits and granting such benefits in an effort to dissuade employees interest in and support of the Union.

(h) Soliciting employees' complaints and grievances concerning the existing production rates and promising to reevaluate the rates and provide employees with information concerning rates in an effort to cause employees to abandon the Union.

(i) Withdrawing and removing improvements and/or accessories installed in the restroom facilities in reprisal for employees support of the Union.

(j) Threatening employees with loss of scheduled wage increases because of, and in the event of, their continued support of the Union.

(k) Creating the impression of surveillance of union activities by informing employees that Respondent knew they had information about the Union.

(l) Assigning employees to more onerous work under conditions which are more physical, difficult, and demanding in reprisal or retaliation because said employees would not submit to Respondent's interrogations concerning the Union or said employee's participation in the Union.

(m) Threatening employees with loss of pay and/or wages if the Union were successful in organizing Respondent's employees.

(n) Increasing employee production rates in reprisal or retaliation for the employee's support and activities on behalf of the Union.

(o) Threatening employees with loss of employment if the Union successfully organized said employees.

(p) Discharging its employees because they engage in union activities or in retaliation because they have selected the Union as their collective-bargaining representative, in an attempt to discourage union membership.

(q) Failing and refusing to reinstate its employees because they engaged in union activities or in retaliation because they have selected the Union as their collective-bargaining representative in an attempt to discourage union membership, and because the Board's processes were invoked on behalf of employees and because employees gave or provided tesimony under the Act.

(r) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization as guaranteed by Section 7 of the Act.

2. Take the following affirmative action which I deem necessary to effectuate the policies of the Act:

(a) Offer Selmia Agnes Tootle immediate and full reinstatement to her former position or, if that position is no longer available, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered by reason of the discrimination against her in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Post at its Biloxi, Mississippi, plant copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 15, in writing, within 20 days of this Order, what steps have been taken and comply herewith.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT solicit employee grievances and promise to resolve such grievances to prevent unionization.

WE WILL NOT threaten employees with plant closure in the event of unionization.

WE WILL NOT coercively interrogate our employees concerning their union activities.

WE WILL NOT coercively interrogate our employees concerning how they intend to vote.

WE WILL NOT grant employees their choice of departmental representatives and conduct votes among our employees for such purposes in an effort to resolve employee complaints to persuade employees to abandon their desire for unionization.

WE WILL NOT threaten employees with loss of existing benefits if they support the Union or if the Union is successful in the upcoming election.

WE WILL NOT promise employees or grant such promises to employees of increased benefits without discussions with the Union.

WE WILL NOT promise employees that our plant rules and regulations will be revised in response to employee complaints in an effort to persuade employees to lose interest in the Union or support for the Union.

WE WILL NOT solicit employee complaints and grievances concerning the existing production rates and WE WILL NOT promise to reevaluate the rates and provide employees with information concerning rates without discussions with the Union.

WE WILL NOT promise employees additional and improved benefits without first discussions with the Union.

WE WILL NOT withdraw or remove improvements to and/or accessories installed in the restroom facilities without first discussions with the Union.

WE WILL NOT threaten employees with loss of scheduled wage increases because of, and in the event of, their continued support of the Union.

WE WILL NOT create the impression of surveillance of union activities by informing employees that we know and have information about the Union.

WE WILL NOT assign employees to more onerous work under conditions which are physically more difficult, and more demanding in reprisal or retaliation because of their support for the Union.

WE WILL NOT threaten employees with loss of pay and/or wages if the Union is successful in organizing our plant.

WE WILL NOT increase employee production rates in reprisal or retaliation for the support and activities on behalf of the Union.

WE WILL NOT threaten employees with loss of employment if the Union successfully organizes our plant.

WE WILL NOT reprimand, suspend, lay off, or discharge our employees because they engage in union activities or in retaliation because they have selected the Union as their collective-bargaining representative.

WE WILL NOT reprimand, suspend, lay off, or discharge our employees because they engage in union activities or because they had invoked the Board's processes and because they gave or provided testimony under the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization as guaranteed by Section 7 of the Act.

WE WILL offer Selmia Agnes Tootle immediate and full reinstatement to her former position or, if that position is no longer available, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges and WE WILL make her whole for any loss of earnings she may have suffered by reason of our discrimination against her with interest.

CLEMENTS WIRE & MANUFACTURING COMPANY, INC.